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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,164	08/18/2005	Clark D. Klein Jr	13779-17	8330
45473 7590 06/10/2009 BRINKS, HOFER, GILSON & LIONE P.O. BOX 1340 MORRISVILLE, NC 27560				
EXAMINER				
ARK, DARREN W				
ART UNIT		PAPER NUMBER		
3643				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,164

Applicant(s)

KLEIN JR ET AL.

Examiner

Darren W. Ark

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 7-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Election/Restrictions

1. Claims 7-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 05/19/2008.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-6, 17 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Collins et al. 2004/0031190.

Collins et al. discloses a housing (200) configured as a landscape element (no particular structure being claimed) and having a bottom surface (part of bottom cylinder of 200 and including bottom horizontal surface of 200 in Fig. 5 or 110 in Fig. 2) adapted

to engage an upper ground surface (bottom of 200 capable of engaging an upper surface of the ground), the housing defining a cavity (inner volume of 200) and an opening (holes or apertures in bottom horizontal surface of 200 shown in Fig. 5 or 112 in Fig. 2) to the cavity through the bottom surface of the housing; a perforated bait cartridge (205, 215 with apertures 218 therethrough) configured to fit within the cavity; a bait material (225) disposed within the bait cartridge; a mesh-like member (215 with 217 with one or more apertures 219 in a bottom conical end; see paragraph 0046-0053 OR bait material inserted into apertures 112 to include dowels having holes drilled through their bodies or slots scored along their edges, rolled cardboard [corrugations provide holes therethrough], hollow cylinders, bundles of drinking straws [with the holes in the straws providing a mesh-like configuration]---see paragraph 0034) operably engaged with the housing about the bottom surface (207, 217 engaged with the housing via 230-232 which are integral to 200) to cover the opening to the cavity (207, 217 with 219 extend over 212 and cover the openings; no particular structural relationship being recited) and to retain the bait cartridge in the cavity (207, 217 serve to maintain 205, 215 in position by frictional contact with 230-231), the mesh-like member defining openings (219) therein, with the openings being sized to permit termites attracted by the bait material to pass therethrough into the cavity and the bait cartridge and to infiltrate the housing; and an inspection hatch (105) engaged with the housing and configured to allow visual inspection of the cartridge within the cavity from outside the housing, without removing the housing from engagement with the upper ground surface.

In regard to claim 2, Collins et al. discloses the inspection hatch configured to be opaque (made from wood, plaster, concrete, asphalt, tile, brick, masonry, ceramic, metal etc. which are opaque materials).

In regard to claim 3, Collins et al. discloses at least one of the bait cartridge, the cavity, and the mesh-like member are configured so as to become increasingly prominently visible through the inspection hatch as the bait material is consumed (mesh-like member 207, 217 below bait material 225 becomes more visible as bait 225 is consumed since bait 225 is between the inspection hatch and mesh-like member 207, 217).

In regard to claim 4, Collins et al. discloses an anchor (134).

In regard to claim 5, Collins et al. discloses the housing (200 can be made from wood), the mesh-like member (207, 217 can be made from wood), the bait cartridge (205, 215 can be made from materials capable of being consumed by termites), and the bait material (225 made of cellulose) being configured to cooperate to allow the bait material to contact the upper ground surface when the housing is in engagement with the upper ground surface (as the individual components are consumed by termites from the outer surface toward the interior of the housing where the bait material 225 is located, it causes the surrounding soil to come in close contact with the bait material 225 since the structure around the bait material 225 collapses during consumption; no particular structure or configuration being claimed).

In regard to claim 6, Collins et al. discloses the bait material being configured to be self-wicking (225 made of cellulose materials which are self-wicking, which include wood, cardboard, fiberboard, paper, and sawdust).

In regard to claim 17, Collins et al. discloses the housing being configured as a landscaping element selected from the group consisting of a rock, a log, a paving or stepping stone, a brick, a border element, and a decorative figurine (the structure of 200, 125 can be configured as such since no particular structure or configuration is being claimed; for example the round cross section of 200, 125 can be considered as a round border element).

4. Claims 1-6, 17 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Masterson 6,370,811.

Masterson discloses a housing (12, 48) configured as a landscape element (no particular structure being recited) and having a bottom surface (bottom half of 12) adapted to engage an upper ground surface (bottom half of 12 is capable of engaging an upper layer of ground), the housing defining a cavity (see Figs. 3, 4) and an opening (between 44 along bottom half of 12) to the cavity through the bottom surface (see opening in Fig. 3); a perforated bait cartridge (12' is perforated with 40 to allow termites to pass, 30 is perforated to receive 24 therein, 24 is perforated to receive threaded member to attach 26 to 24, 26 is perforated to receive upper end of 16; perforations not being particularly claimed); a bait material (16); a mesh-like member (42, 43) engaged with the housing (between 44) about the bottom surface (42, 43 have portions along the bottom half of 12) so as to cover the opening to the cavity (42, 43 cover the opening or

gap between 44), the mesh-like member defining openings (43) therein, with the openings being sized to permit termites attracted by the bait material to pass therethrough into the cavity (see Fig. 4) and the bait cartridge and to infiltrate the housing (so as to consume 16 and cause it to raise the flag 24); and an inspection hatch (54-56) operably engaged with the housing (12) and configured to allow visual inspection of the cartridge within the cavity (see col. 5, lines 17-46) from outside the housing, so as to determine whether the termites have infiltrated the housing and consumed the bait material in the bait cartridge, without removing the housing from engagement with the upper ground surface (inspection can occur by monitoring flag 24 or by using bail member 56 attached to top of core portion 12' for facilitating removal thereof axially from the top of body 12 when the main cap 54 is removed wherein thereafter it can be inspected).

In regard to claim 2, Masterson discloses the inspection hatch being opaque (see Fig. 3 wherein 54-56 is illustrated in cross section as being opaque).

In regard to claim 3, Masterson discloses at least the bait cartridge (12' can be seen more readily since 16 is decreased in volume within 12' and also 24 is exposed upon threshold consumption of 16), the cavity (cavity becomes more open due to consumption of either 42 or 16), and mesh-like member (consumption of 42 causes the volume within 12 to show more of 42) being configured to become increasingly visible through the inspection hatch as the bait material (16) is consumed.

In regard to claim 4, Masterson discloses an anchor member (50; anchor member not being particularly claimed).

In regard to claim 5, Masterson discloses the mesh-like member, the bait cartridge, and bait material being configured to cooperate to allow the bait material to contact the upper ground surface when the housing is in engagement with the upper ground surface (bottom of 12 has opening 46 allowing ground to enter 12, also openings 43, 18, 43 allow ingress of ground into contact with 16).

In regard to claim 6, Masterson discloses the bait material being self-wicking (16 of cardboard is capable of absorbing water).

In regard to claim 17, Masterson discloses the housing configured to as a landscaping element (housing 12, 48 capable of being part of a landscape design; no particular structure or configuration being recited).

5. Claims 1-6, 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nimocks 5,950,356.

Nimocks discloses a housing (11) configured as a landscape element (no particular structure being recited) and having a bottom surface (lower half of 11), the housing defining a cavity (interior of 11) and an opening (lowermost occurrence of 7 on bottom half of 11) to the cavity through the bottom surface of the housing (7 extends through 11); a perforated bait cartridge (20); a bait material (sawdust inside 20); a mesh-like member (1 covers 7 and has openings 2 defined therein similar to an open mesh; mesh-like member not being particularly claimed) defining openings (2) therein, with the openings being sized to permit termites attracted by the bait material (2 can permit termites to enter and also be capable of being enlarged by termites for entry therethrough by consumption of 1); and an inspection hatch (6, 14).

In regard to claim 3, Nimocks discloses the cavity becoming increasingly visible as the bait material is consumed (as sawdust is consumed, cavity becomes more open).

In regard to claim 4, Nimocks discloses an anchor member (corners of 11).

In regard to claim 5, Nimocks discloses the housing, mesh-like member, bait cartridge, and bait material being configured to cooperate to allow the bait material to contact the upper ground surface when the housing is in engagement with the upper ground surface (openings 7 allow ground to come into contact with the sawdust housed within mesh bag similar to the manner in which the desired invention allows the bait material to contact the upper ground surface; also ground surface could come into housing via 6).

In regard to claim 6, Nimocks discloses the bait material as being self-wicking (sawdust is water absorbent).

In regard to claim 17, Nimocks discloses the housing configured to as a landscaping element (housing 11 capable of being part of a landscape design; no particular structure or configuration being recited).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Townsend 6,874,274 discloses a rock simulating pest trap with a top (70) hinged to a bottom (12). Lund 6,729,067 discloses an inspection hatch (30) hingedly connected to the housing (20, 5, 6). Su 6,397,516 discloses an opaque inspection hatch (see Fig. 1C) which is hinged to the housing (also see col. 15, lines 4-

53). Simpson 6,145,242 discloses an integrated pest management system including a top (24) configured to resemble a natural rock and wherein upper bait chamber (92) can contain an insect bait and poison.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/
Darren W. Ark
Primary Examiner
Art Unit 3643

DWA